

WIPO LIST OF NEUTRALS
BIOGRAPHICAL DATA

Daniel J. GERVAIS
Vanderbilt University Law School
Nashville, TN
United States of America



Nationality: Canadian

EDUCATIONAL AND PROFESSIONAL QUALIFICATIONS

Doctor of Law (intellectual property), University of Nantes, Nantes, 1998;
Diploma of Graduate International Studies (international copyright law), Graduate Institute of
International Studies, Geneva, 1989;
LL.M. (computer law), University of Montreal, 1987;
Computer Science studies, University of Montreal, 1985;
LL.B. (civil law), McGill University and University of Montreal, 1984.

Admitted to Quebec Bar, 1985;
Admitted to Law Society of Upper Canada, 2003.

LANGUAGES

English, French, Spanish

PRESENT POSITION

FedEx Research Professor of Law, Vanderbilt University Law School (2008-)
Editor-in-Chief, Journal of World Intellectual Property, Wiley-Blackwell (2006-).

PROFESSIONAL EXPERIENCE BEFORE PRESENT POSITION

Acting Dean, Common Law Section, University of Ottawa (Feb-Jul 2006 and Sep-2007-July 2008);
University Research Chair, Common Law Section, University of Ottawa (2006-2008);
Vice-Dean and Oslers Professor of Technology Law, Faculty of Law, University of Ottawa, since 2001;
Council Member, International Commission of Jurists (CICJ) Canada, since 2002;

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Vice President, International, Copyright Clearance Center, Inc. (CCC), Danvers, 1997-2001;
 Intellectual Property Consultant, Organisation for Economic Cooperation and Development (OECD), Paris, 1996-98;
 Vice-Chairman, International Federation of Reproduction Rights Organizations (IFRRO) and Chairman, IFRRO's New Technologies Committee;
 Assistant Secretary General, International Confederation of Societies of Authors and Composers (CISAC), Paris, 1996-96;
 Head, Copyright Projects Section, World Intellectual Property Organization (WIPO), Geneva, 1993-95;
 Legal Officer, Copyright Department, World Intellectual Property Organization (WIPO), Geneva, 1992-93;
 Consultant/Legal Officer, Group of Negotiations on Goods and Policy Affairs Division (TRIPS negotiations), General Agreement on Tariffs and Trade (GATT), Geneva, 1990-91;
 Lawyer, Intellectual property/litigation, Montreal, 1985-90.

MEMBERSHIP IN PROFESSIONAL BODIES

Law Society of Upper Canada;
 Quebec Bar
 International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP).—member of the Executive Committee
 ALAI USA
 ABA (Chair, International Copyright Committee)
 AIPLA

AREAS OF SPECIALIZATION

Intellectual property, technology and innovation law and policy.

EXPERIENCE IN INTELLECTUAL PROPERTY

Biotechnology, software, electronic commerce and digital technology, copyright & copyright management systems.

MAJOR PUBLICATIONS

English:

The TRIPS Agreement: Drafting History and Analysis, 3rd ed. (Sweet & Maxwell, December 2008), 785 p. (cited by the Supreme Court of the United States (majority opinion) in *Golan v. Holder* (2011));
Intellectual Property: The Law in Canada, 2nd edition (Toronto: Carswell, 2011), 780 p.;
Collective Management of Copyright and Related Rights, 2nd ed. (Kluwer Law International, 2010) 495 p. (Editor);
 'TRIPS Articles 10; 63-71', in *Concise International and European IP Law*, 2d Ed. (Thomas Cottier and Pierre Véron, Eds). Kluwer Law International, 2011, Pp. 38-42 and 168-186 ;
 'Cloud Control: Copyright, Global Memes and Privacy', *J. Telecom. & High Tech L.* (2011) (coauthored with Dan Hyndman);
 'Golan v. Holder, A Look at the Constraints Imposed by the Berne Convention', 64 *Vanderbilt Law Review En Banc* 147-163(2011) (cited by the Supreme Court of the United States);
 'The Landscape of Collective Management', 24:4 *Columbia J. L & Arts* 423-449 (2011);
 'Pamela Samuelson et al., The Copyright Principles Project', 25:3 *Berk. Tech. L.J.* 1175-1246 (2010);
 'Making Copyright Whole: A Principled Approach to Copyright Exceptions and Limitations', 5:1/2 *Univ. Ottawa L. & Tech. J.* 1-41 (2008);
 'The Google Book Settlement and the TRIPS Agreement', 2011 *Stanford Tech. L.R.* 1-11;
 'Fair Use, Fair Dealing, Fair Principles: Efforts to Conceptualize Exceptions and Limitations to Copyright', 57:3 *J. Copyright. Soc.y of the USA* 499-520 (2010);

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- 'Reinventing Lisbon: The Case for a Protocol to the Lisbon Agreement', 11:1 *Chicago J. Int'l L.* 67-126 (2010);
- 'The Regulation of Inchoate Technologies', 47 *Houston L. Rev.* 665 (2010);
- 'The 1909 Copyright Act in Historical Context', 26:2 *Santa Clara High Tech L.J.* 185-214 (2010);
- 'Towards a Flexible International Framework for the Protection of Geographical Indications', 1:2 *WIPO Journal* 147-158 (2010) (coauthored with Prof. Christophe Geiger, Norbert Olszak and Vincent Ruzek);
- 'The Misunderstood Potential of the Lisbon Agreement', 1:1 *WIPO Journal* 87-102 (inaugural issue - on invitation) (2010);
- 'Traditional Knowledge: Are We Closer to the Answers?', 15:2 *ILSA J. of Int'l. and Comp. Law* 551-567 (2009);
- 'The Tangled Web of User-Generated Content', 11:4 *Vanderbilt J. of Technology And Entertainment Law* 841-870 (2009);
- 'World Trade Organization panel report on China's enforcement of intellectual property rights', 103:3 *American J. Int'l L.* 549-554 (2009) (International decision--on invitation);
- 'Of Clusters and Assumptions: Innovation as Part of a Full TRIPS Implementation', 77:5 *Fordham L. R.* 2353-2377 (2009);
- 'User-Generated Content And Music File-Sharing: A Look At Some Of The More Interesting Aspects Of Bill C-32', in *From "Radical Extremism" To "Balanced Copyright": Canadian Copyright And The Digital Agenda* (Michael Geist, Ed., Irwin Law, 2010);
- 'Of Silos And Constellations: Comparing Notions of Originality in Copyright Law', in *Intellectual Property Protection of Fact-Based Works* (Robert F. Brauneis, Ed, Edward Elgar, 2010) 74-106—coauthored With Professor Elizabeth Judge;
- 'Policy Calibration and Innovation Displacement', in *Developing Countries in the WTO Legal System* (Joel Trachtman, And Chantal Thomas, Eds.) (Oxford Univ. Pr., 2009) 363-394;
- 'TRIPS 3.0', in *The Development Agenda: Global Intellectual Property and Developing Countries* (Neil W. Netanel, Ed) 51-75. (Oxford Univ. Pr., 2009);
- 'A Uniquely Canadian Institution: The Copyright Board of Canada', in *A New Intellectual Property Paradigm: The Canadian Experience* (Ysolde Gendreau Ed). (Edward Elgar, 2009);
- 'Intellectual Property And Human Rights: Learning To Live Together', in *Intellectual Property And Human Rights* (Paul Torremans, Ed). (Wolters Kluwer, 2008) pp. 3-24;
- 'The Protection of Databases', 82:3 *Chi-Kent L. Rev.* 1101-1169 (2007);
- 'The Purpose of Copyright Law in Canada', 2:2 *Univ. Ottawa. J. L. & Tech.* 315-356 (2006);
- 'The Changing Landscape of International Intellectual Property', 2 *J. Of Intell. Prop. Law & Practice* 1-8 (2006);
- Intellectual Property and Development: The State of Play, 74 *Fordham Law Review* 505-535 (2005);
- 'A Canadian Copyright Narrative', in *Copyright Law: A Handbook Of Contemporary Research* (Paul Torremans, Ed.) (Edward Elgar, 2007) 49-82;
- Intellectual Property, Trade and Development* (Oxford Univ. Press, 2007) 564 p. (editor);
- 'Traditional Knowledge & Intellectual Property: A TRIPS-Compatible Approach', [2005] *Mich. St. L. Rev.* 137-166;
- 'Towards A New Core International Copyright Norm: The Reverse Three-Step Test' (2005), 9 *Marq. Intell. Prop. L. Rev.* 1-37;
- 'The Price of Social Norms: Towards a Liability Regime for File-Sharing' (2004), 12:1 *J. of Intellectual Prop. L.* 39-73;
- 'Canadian Copyright Law Post-CCH' (2004) 18:2 *I.P.J. (Can.)* 131-167;
- 'The Compatibility of the 'Skill and Labour' Originality Standard with the Berne Convention and the TRIPs Agreement, (2004) 26:2 *Eur. Int. Prop. Rev.* 75-80;
- 'Spiritual But Not Intellectual? The Protection of Sacred Intangible Traditional Knowledge' (2003), 11 *Cardozo J. of Int'l & Comp. Law* 467-495;
- TRIPS, Doha & Traditional Knowledge : A Proposal, (2003), 6 *J. of World Int. Prop.* 403-419;
- Fragmented Copyright, Fragmented Management: Proposals to Defrag Copyright Management, (2003) 2 *Can. J. of L. & Tech* 15-34 (with Prof. Alana Maurushat);
- "Copyright and the Use Paradigm", in Zentaro Kitagawa (ed.) *Copymart: The Product and Its Prospects: Proceedings of the Berlin Symposium*. Kyoto: IIAS, 2003);
- Application of an Extended Collective Licensing Regime in Canada: Principles and Issues Related to Implementation. Report prepared for Heritage Canada (2003);
- Feist Goes Global: A Comparative Analysis of the Notion of Originality in Copyright Law, 49:4 *J. of the Copyright. Society of the USA*, 949-981 (2002)*;
- (*Winner of the Charles B. Seton Award for 2002-03);

- Collective Management of Copyright and Neighbouring Rights in Canada: An International Perspective, (2002) 1 *Canadian Journal of Law & Technology* 21-50;
- "Music Transmissions on the Internet: An Analysis of the Laws of Canada, France, Germany, Japan, the United States and the United Kingdom", 34:5, *Vanderbilt Journal of Transnational Law*, 1363, 2001;
- "The Internationalization of Intellectual Property: New Challenges from the Very Old and the Very New, 12:4, *Fordham Intellectual Property, Media and Entertainment Law Journal*, 929, 2002;
- "Copyright and eCommerce: License or Lock-up?", Wilkof, Neil et al (ed.) chapter in *Intellectual Property in the Global Marketplace*, John Wiley & Sons, New York, 2002;
- "The TRIPS Agreement After Seattle: Implementation and Dispute Settlement Issues", 3 *J.W.I.P.* 4, 509, July 2000;
- "Electronic Rights Management Systems", 3 *J.W.I.P.*, January 2000;
- "An Overview of TRIPS: Historical and Current Issues". In *International Intellectual Property Law and Policy 1999*, New York, Fordham University, April 1999;
- "Digital Distance Education: Exemption or Licensing?". In *International Intellectual Property Law and Policy 1999*, New York, Fordham University, April 1999;
- "The TRIPS Agreement: Interpretation and Implementation", *E.I.P.R.* 3, 156, April 1999;
- "Intellectual Property in the MAI: Lessons to Be Learned", 2 *J.W.I.P.* 2, 257, March 1999;
- "The TRIPS Agreement: A Solution to Online Liability?". 89 *Copyright World*, April 1999;
- "Electronic Rights Management and Digital Identifier Systems", *Journal of Electronic Publishing*, March 1999, (online only, available at <http://www.press.umich.edu/jep/04-03>);
- "The Law and Practice of Digital Encryption", University of Amsterdam, 64 p., 1998;
- "ECMS: From rights trading to Electronic Publishing", In "The Publisher in the Changing Markets; Proceedings of IPA Fourth International Copyright Symposium, Tokyo, Ohmsha, 1998;
- "The TRIPS Agreement: Enforcement and Dispute-Settlement Provisions". In "The Publisher in the Changing Markets. Proceedings of IPA Fourth International Copyright Symposium", Tokyo, Ohmsha, 1998;
- "Intellectual property: The Key to Unlocking Innovation and Protecting its Results", Report prepared for the OECD Directorate for Science, Technology and Industry. Not yet derestricted;
- "ECMS: The Policy Issues", In "IMPRIMATUR Consensus Forum. 21/22 November 1996", London, Imprimatur, 1996;
- "Digital Technology and the Copyright Industries", *Copyright World*, August 1996;
- "The Protection of Copyright on the Information Superhighway". *IPA Bulletin*, 1996;
- "Electronic Publishing", in "Proceedings of EP'94", The Science Press, Beijing, 1994;
- "Protection of Intellectual Property: The role of the World Intellectual Property Organisation (WIPO)", 6 *Learned Publishing*, 21, 1993;
- "International Trade and the Environment: An Outline of the Main Issues", *Quarterly Review of the International Economic Law Society SDIE*, 992;
- "The Protection Under International Copyright Law of Works Created with or by Computers", 5 *IIC International Review of Industrial Property and Copyright Law (Munich)*, 1991;

Français:

- L'Accord sur les ADPIC: Propriété Intellectuelle À l'OMC* (Larcier, 2010), 733 p.
- Le Droit de la Propriété Intellectuelle*, (Yvon Blais, 2006). 702 pages—avec Elizabeth Judge et Mistral Goudreau ;
- "Le droit d'auteur au Canada après CCH" (2005), 203 *Rev.Int. Dr. Aut.* 2-61;
- Essai sur la fragmentation du droit d'auteur, 2^e partie (2004) 16 *Cahiers de propriété intellectuelle; Droit du commerce électronique* (Vincent Gautrais, ed., 2003). Recension. (2003) , 33 *Rev. Gén. Droit* 489-505;
- Être au parfum : protéger la marque olfactive au Canada?, (2003) 15 *Cahiers de propriété intellectuelle*, 865-904;
- Application d'un régime de licence collective étendue en droit canadien : principes et questions relatives à la mise en œuvre. Étude établie pour Patrimoine Canada (2003);
- Essai sur la fragmentation du droit d'auteur, (2003) 15 *Cahiers de propriété intellectuelle* 501-536;
- L'affaire Théberge (2002), 15 *Cahiers de propriété intellectuelle* 217-240;
- La propriété des auteurs: Un droit pour des voleurs?, *Le Monde Diplomatique*, octobre 2002;
- "Le droit d'auteur au Canada: fragmentation ou gestion fragmentaire", in Y. Gendreau (éd.). *Institutions administratives du droit d'auteur*. Cowansville, Yvon Blais, 2002, pp-459-477;
- Gestion collective du droit d'auteur et des droits voisins au Canada : Perspective internationale. Rapport établi pour le ministère du Patrimoine canadien;
- "La notion d'oeuvre dans la Convention de Berne et en droit comparé", (The notion of work under the

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- Berne Convention and in comparative law), Droz, Genève, 276 p., 1998;
- "*L'état des lieux: la gestion collective dans le monde, en Europe et en France*", (Collective Management of Rights in France, Europe and the World : The State of Play), SACEM, Paris, 1996;
- "*Gestion des droits*", (Rights Management), in "*Actes du colloque Les autoroutes de l'information : Enjeux et défis, Huitièmes Entretiens du Centre Jacques Cartier Rhône-Alpes - 5 au 8 décembre 1995*" (Acts of the meeting "The Information Highway: Issues and Challenges. Eighth Jacques-Cartier Center Roundtable; December 5 to 8, 1995), Université de Lyon-2, 1996;
- "*Les oeuvres multimédia: le point de vue de l'OMPI*", (Multimedia Works: The WIPO Point of View), in "*Le multimédia : Marché, droit et pratiques juridiques. Actes du Juriscope 94*", (Multimedia: Market, Law and Legal Practices: Acts of the 1994 Juriscope Meeting), Paris, P.U.F., 1995;
- "*Les négociations TRIPS et l'Uruguay Round : le point à dix semaines de Bruxelles*", (The TRIPS Negotiations and the Uruguay Round: The State of Play Ten Weeks Before the Brussels Meeting), 5 Cahiers juridiques et fiscaux de l'exportation, 1990;
- "*La protection par le droit d'auteur international des créations assistées ou réalisées par ordinateur*", (The Protection under International Copyright Law of Creations Assisted or Created by Computer). Institut universitaire de Hautes Etudes Internationales, Geneva, 1989;
- "*Pacta ex machina. Un système de conception assistée du contrat d'utilisation de progiciel*", (*Pacta ex Machina : A computer-assisted software license generator*) in "Systèmes experts et droit", (Experts Systems and the Law), Namur, Story-Scientia, 1988 ;
- "*Le droit de refuser un traitement psychiatrique au Québec*", Les Cahiers de Droit, 1985.

German:

- "*Was ist die CISAC?*", (What is CISAC?), GEMA Nachrichten, Ausgabe 152, GEMA, Munich, 1996;
- "*Urheberschutz am Datenhighway*", (Copyright and the Information Highway), 3/95, Österreichische Autoren, 1995.

Spanish :

- "Los sistemas básicos de derecho de autor y copyright: La noción de obra y la gestión de los derechos de autor", (2001) 26 Revista de derecho privado (Colombia), 15;
- "*Identificación de las obras utilizadas en sistemas digitales*", (Identification of Works Used in Digital Systems); and "*El principio del trato nacional en los acuerdos internacionales de propiedad intelectual*", (The Principle of National Treatment in International Intellectual Property Agreements), chapters in "*Num novo mundo do direito de autor*", Lisbonne, COSMOS/Arco-Iris, 1994.

EXPERIENCE IN COURT LITIGATION

Five years of active litigation in intellectual property, employment and contract law.

EXPERIENCE IN ARBITRATION

Drafting arbitration agreements in complex, international licensing agreements.
